to three — was that the Commonwealth has the absolute right to the waters of our great ponds, free from any duties to the riparian owners on the streams forming the outlet; that it may grant to a city the right to take the water, and the lower riparian owners can claim no compensation for the consequent injury to them. For interesting articles on both sides of the question, see 2 Harvard Law Review, 195 and 316.

In view of the importance and difficulty of the question, it is a disappointment to find that on the rehearing the court expressly refuses to reconsider its decision, and bases the reversal solely on the fact, which is now made to appear for the first time, that the plaintiffs' predecessors acquired title to these ponds by a grant prior to the date when the Colonial Ordinance of 1647, on which the title of the Commonwealth to the great ponds is based, became law. The Ordinance could, of course, have no effect on the existing private ownership, and therefore the Commonwealth never acquired title to these particular ponds, and its grantee, the City of Fall River, is enjoined from taking the water.

The general principle laid down by the former decision, as stated above, remains, however the law of Massachusetts.

BOTH graduates and present members of the school will doubtless be interested to hear that the degree of LL.D. has recently been conferred upon Prof. James B. Thayer by the Iowa State University.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMINISTRATORS — PERSONAL LIABILITY. — An administrator recovered a judgment and, after appeal was barred, waived his advantage and allowed the same to be taken. The appellate court reversed the judgment, and refused a new trial, on the ground that the proof showed no cause of action. *Held*, that he was not obliged to insist on the technicality, and was not personally liable to the estate for the amount of the judgment. *McGuire* v. *Rogers*, 21 Atl. Rep. 723 (Md.).

The reasoning of the court is that an administrator is not obliged to insist upon or set up a legal right when justice does not require it. In accordance with this principle it is generally held that an administrator may waive the Statute of Limitations. The present case is interesting as indicating that the right to waive will be extended to other defences concerning which the law is as yet unsettled. See Williams on Executors, 7th edition, p. 1801; Woerner's Law of Administration, pp. 841, 843; 15 Mass. 8, note.

AGENCY — FELLOW-SERVANTS — SEPARATE DEPARTMENTS. — One who is employed by a railroad company, under a foreman, to make repairs in its repair-shops and on cars standing in its yards is not a fellow-servant of a switchman who, under orders of the yard-master, directs the movement of cars in the yard. *Pool* v. *Southern Pac. R. Co.*, 26 Pac. Rep. 654 (Utah).

AGENCY — ORAL AGREEMENT TO EXCHANGE — PART PERFORMANCE — STATUTE OF FRAUDS. — In an action for specific performance, the evidence showed that defendant placed the property in the hands of an agent to sell or exchange, and by his efforts met plaintiff, and agreed orally to exchange with him. Plaintiff left a deed with the agent, but defendant refused to accept it. *Held*, that a deliv-

ery to the agent was not a delivery to defendant so as to constitute part performance and take the agreement out of the Statute of Frauds. *Swain* v. *Burnette et al.*, 26 Pac. Rep. 1093 (Cal.).

ASSIGNMENT — SALARY — PUBLIC POLICY. — An assignment of the salary of the chaplain to a workhouse and workhouse infirmary is not void as being against public policy. *In re Mirams* [1891], Q. B. 594 (Eng.).

CARRIERS — LIMITING LIABILITY. — A stipulation by a carrier that he will be liable only to a limited amount, unless the true value of the goods is given, is valid, and will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives, when the loss of the goods results only from slight, common, or ordinary negligence on the part of the carrier. *Pacific Exp. Co.* v. *Foley*, 26 Pac. Rep. 665 (Kan.).

This brings Kansas into the list of those States which allow a carrier to limit his liability. The rule there was formerly the other way. See *Kallman* v. *Express Co.*, 3 Kan. 205.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — "WILSON BILL." — The provision of the federal Constitution vesting in Congress the exclusive power to regulate interstate commerce does not guarantee the absolute freedom of such commerce; and hence the "Wilson Bill" (Act Cong. Aug. 8, 1890, 26 St. 313), which provides that intoxicating liquors brought into any State shall be subject to the laws enacted in the exercise of its police power "to the same extent and in the same manner as though such liquors had been produced in such State, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise," is not an unconstitutional restriction. *Wilkerson, Sheriff*, v. *Rahrer*, 11 Sup. Ct. Rep. 865.

CONSTITUTIONAL LAW — RELIGIOUS LIBERTY — COMPULSORY ATTENDANCE AT COLLEGE CHAPEL. — A rule of the trustees of the State university, requiring students to attend non-sectarian religious exercises in the university chapel is not in conflict with Const. Ill., art. 2, § 3, which provides that "no person shall be required to attend or support any ministry or place of worship against his consent." *North* v. *Board of Trustees of University of Illinois*, 27 N. E. Rep. 54 (Ill.).

CONTRACT — DEMURRAGE — VIOLENCE OF STRIKERS. — The contract by the freighter to pay demurrage to the ship-owner if the ship is not unloaded at the end of a fixed number of lay days is an absolute one, subject to the ship-owner doing nothing to prevent the unloading; and consequently delay in unloading caused by a strike of dock laborers over whom the ship-owner had no control will not relieve the freighter from his liability to pay demurrage. *Budgett & Co.* v. *Binnington & Co.*, 63 L. T. N. S. 742, Ct. of App. (Eng.).

CONTRACT — PUBLIC POLICY. — Where the public has an interest in the location of a public building, as a post-office, a contract to induce the retention of the building at a given point for private gain and benefit is against public policy, and unenforceable. *Woodman* v. *Innes*, 27 Pac. Rep. 125 (Kan.).

CONTRACTS — WANT OF CONSIDERATION — FRAUDULENT CONVEYANCES. — A conveyance of real estate by a father to a minor son, for the son's services during his minority, is a voluntary conveyance, without legal consideration, and therefore void as to the creditors of the parent, if made when the latter had no other property subject to execution. "The obligation rested upon the father to support the son, who, in turn, owed the father his services until he became of age." *Stumbaugh et al.* v. *Anderson et al.*, 26 Pac. Rep. 1045 (Kan.).

CRIMINAL LAW — CONVICT — NEW SENTENCE. — A convict who escapes from the penitentiary and commits a grand larceny may be convicted and sentenced therefor before he has served out his first sentence. *People* v. *Flynn*, 26 Pac. Rep. 1114 (Utah).

CRIMINAL LAW — EVIDENCE — DEFENDANT AS WITNESS. — A defendant who voluntarily becomes a witness on his own behalf is subject to the same rule as any other witness, and may be asked by the State, on cross-examination, if he had not been convicted of larceny at the previous term of the same court in which he was being tried. *State* v. *Probasco*, 26 Pac. Rep. 749 (Kan.).

EMINENT DOMAIN — RELOCATION OF ROAD-LAND IN PUBLIC USE. — Where, by its charter, a railroad company was authorized to alter the location of its

road, or make a new location in whole or in part: *Held*, that this was not a continuing right, and that the power so granted could not be exercised after the road had once been fully completed and put in operation. And, further, under a general power to condemn land for a right of way, a railroad company cannot seize land occupied by the tracks of another company, though the land was acquired by the latter by purchase and not by the exercise of the power of eminent domain. *In re Providence* v. *W. R. R. Co.*, 21 Atl. Rep. (R. I.) 965.

EQUITY — NO RELIEF TO WRONG-DOER — LIMITS OF PRINCIPLE. — The principle that he who comes into equity must come with clean hands does not apply to misconduct of complainant in no wise affecting the equitable relations between the parties, and not arising out of the transaction as to which relief is sought. *Foster* v. *Winchester*, 9 So. Rep. 83 (Ala.).

HUSBAND AND WIFE — HUSBAND'S AUTHORITY. — Where a wife refuses to live with her husband, he is not entitled to keep her in confinement in order to enforce restitution of conjugal rights. *The Queen* v. *Jackson* [1891], Q. B. 671, Ct. of App. (Eng.).

INSURANCE — A TRADE. — A statute entitled "An Act to declare unlawful trusts and combinations in restraint of trade and commerce, and to provide penalties therefor," embraces the business of insurance, and its provisions as to insurance are covered by the title of the act. *In re Pinkney*, 27 Pac. Rep. 179 (Kan.).

INSURANCE — ACCIDENT. — "Sunstroke or heat prostration" contracted by the decedent in the course of his ordinary duty as a supervising architect is a disease, and does not come within the terms of a policy of insurance against bodily injuries sustained through "external, violent, and accidental means," but expressly excepting "any disease or bodily infirmity." *Dozier* v. *Fidelity Co.*, 46 Fed. Rep. 446 (Mo.).

INSURANCE — INSURABLE INTEREST — HOUSE-MOVER. — A person engaged in moving houses has an insurable interest in the houses which he is moving to the extent of the compensation which he is to receive. *Planters' & Merchants' Ins. Co.* v. *Thurston*, 9 So. Rep. 268 (Ala.).

QUASI-CONTRACT — OFFICIOUSNESS — NO RECOVERY. — Defendants' agent, after being instructed not to purchase any more goods for defendants, agreed with plaintiffs, who had knowledge of his instructions, to purchase a quantity of goods from them for defendants, surreptitiously put them among the stock and sell them, and procure payment from defendants, as he might be able to do, without their knowledge. The goods were so furnished and sold, the proceeds going to defendants. *Held*, that plaintiffs cannot recover for goods sold and delivered, as there was no valid sale. *Shutz* v. *Jordan*, 11 Sup. Ct. Rep. 906.

PERSONAL PROPERTY — WAR PREMIUMS. — Act Cong. June 5, 1882, providing for "the distribution of the unappropriated moneys of the Geneva award," directed the examination and allowance of claims for the "payment of premium for war risks . . . after the sailing of any Confederate cruiser." *Held*, that these claims, even before Congress had made any provision for their payment, were property, and as such passed, under Rev. St. U. S., § 5044, to the assignee in bankruptcy of the claimants, who accordingly is entitled to the amount ultimately awarded therein. Reversing 16 N. E. Rep. 437 (Mass.). *Williams* v. *Heard*, 11 Sup. Ct. Rep. 885.

PERSONAL PROPERTY — GIFTS INTER VIVOS — DELIVERY. — A writing signed and delivered, recited: "I give to the trustees . . . the principal of a note for seven hundred dollars . . . said sum of seven hundred dollars to be given in trust to the said trustees when the said note falls due." The note was not delivered. *Held*, that there was no gift *inter vivos*, but merely an agreement to give when the note became due. *Gammon Theological Seminary* v. *Robbins*, 27 N. E. Rep. 341 (Ind.).

This is in accord with *Irons* v. *Smallpiece*, 3 B. & Ald. 1511, which has been somewhat questioned, but is now settled law in England, *i. e.* that delivery is necessary to make a complete gift *inter vivos*. See *Cochrane* v. *Moore*, 25 Q. B. Div. 57. And see 4 Harv. L. Rev., p. 140.

REAL PROPERTY — BEDS OF RIVERS. — The State, by virtue of her sovereignty, is the owner of "the entire beds of all streams within her borders that

are in fact navigable by the public in the conduct of useful commerce thereon, whether the waters of such stream be salt or fresh, or whether the tides of the sea ebb and flow therein or not." *State* v. *Black River Phosphate Co.*, 9 So. Rep. 205 (Fla.).

This is a distinct departure from the English rule. It is, however, sustained by the weight of American authority.

REAL PROPERTY — ESCROW — HAPPENING OF CONDITION. — A deed in escrow becomes the deed of the grantee on the happening of the condition on which manual delivery should be made, and thereafter the depository is the mere agent or trustee of the grantee. *White Star Line Steam-Boat Co.* v. *Morange*, 8 So. Rep. 867 (Ala.).

REAL PROPERTY — BOUNDARIES — LAKES. — Where land is conveyed bounded by a lake or stream, the grantee takes to the centre. *Hardin* v. *Jordan*, 11 Sup. Ct. Rep. 808.

For the dissenting opinion of Gray, Brewer, and Brown, JJ., that where bounded by a lake he takes only to the water's edge, see 11 Sup. Ct. Rep. 838.

REAL PROPERTY — COVENANTS IN DEEDS — RESTRICTIONS IN BUILDING. — Where the grantees, in deeds prohibiting the erection of a building, or projections therefrom, within a certain distance of a street, deliberately erect such projections, with full knowledge of the prohibition, and of the opposition of the grantor, the Commonwealth, the attorney-general cannot be held guilty of laches in waiting until the erection is completed before taking steps for its removal. Nor can the grantees, after persisting in the erection, contend that the projections are not of sufficient importance to warrant a mandatory injunction or order for their removal. *Attorney-General* v. *Algonquin Club*, 27 N. E. Rep. 2 (Mass.).

REAL PROPERTY — TELEGRAPH LINES — COMPENSATION TO ABUTTING OWNERS. — A city cannot grant to a telegraph company the right to erect its line along a public street without first making compensation to the abutting property owners, since the line is an additional burden. *Stowers* v. *Postal Telegraph Cable Co.*, 9 So. Rep. 356 (Miss.).

There is considerable conflict of authority upon this point. See *West. Union Tel. Co.* v. *Williams*, 11 So. Rep. 106 (Va.), in accord with the principal case. For decisions the other way, see *Pierce* v. *Drew*, 136 Mass. 75, and *Julia Bldg. Ass.* v. *Bell Tel. Co.*, 88 Mo. 258. In most jurisdictions the point has not been passed upon by the courts.

STATUTES — INTOXICATING LIQUORS — MINORS. — A minor whose civil disabilities as such have been removed by a decree in chancery is still a minor within the meaning of statutes prohibiting sales of intoxicating liquor. *Coker* v. *State*, 8 So. Rep. 874 (Ala.).

STATUTES — TERRITORIAL COURTS. — Territorial courts, including the district court created for the district of Alaska, are not "courts of the United States," within the meaning of Rev. St. U. S. § 1768, which excepts judges of the courts of the United States from the authority therein given the President to suspend any civil officer appointed by and with the advice and consent of the Senate. *McAllister* v. *United States*, 11 Sup. Ct. Rep. 948.

WILLS — ACCELERATION OF LEGACIES. — A testator bequeathed his personal estate to his wife for life, and provided that at her death certain specific legacies should be paid, and the residue should go to certain relatives. The wife, having renounced the will, took one-half the personal property absolutely. *Held*, that the specific legacies were thereupon payable in full at once, the wife's renunciation being equivalent to her death. *In re Vance's Estate*, 21 Atl. Rep. 643 (Pa.).

WILLS — SIGNATURE MUST BE SUBSCRIBED — FRENCH LAW. — An olographic testamentary writing containing the caption, "Testament d'Aglae Armant," but without signature at the end or following the testamentary dispositions, does not import such a signature as is required under the historical and rational interpretation of article 1588 of the Civil Code. The court said: "It is true that, in interpreting a like provision of the first English Statute of Frauds, an English court held that writing the name at the beginning of the testament supplied the absence of signature at the end; and some other courts, with that subjection to precedent which characterizes that system, followed the decision. But, though following it, some of the judges intimated that, if it were *res nova*, they would decide differently, and the doctrine was condemned by sound legists. And such was the prevalent dissatisfaction that an act of Parliament was passed

to amend the statute so as expressly to require the signature to be at the bottom of the testament." *In re Armant's Will*, 9 So. Rep. 50 (La.).

In view of the fact that it was found necessary in England to limit in turn the act of Parliament above referred to, and that a signature at the bottom of the will is not required in a majority of American jurisdictions, the criticism of the English law in the principal case seems unnecessarily severe.

REVIEWS.

SEDGWICK ON THE MEASURE OF DAMAGES. Eighth edition, revised, rearranged, and enlarged by Arthur G. Sedgwick and Joseph H. Beale, Jr. Three volumes. New York: Baker, Voorhis, & Co., 1891. pp. xii and 1360.

The eighth edition of "Sedgwick on Damages," in three large volumes, is a striking proof that the measure of compensation is not what popular opinion thought it eleven years ago (the date of the last edition), but that, on the contrary, it is a real and important auxiliary of the substantive law of property. It is now recognized that damages is a right of property in another's goods, springing from the judgment of a court that the plaintiff has a certain interest in a part of the defendant's property.

Of the forty years that have elapsed since *Hadley* v. *Baxendale* was decided, the last decade has seen the greatest development of the theory of compensation, and it is because the editors have collected and codified the legal product of this period that their work is of such great value.

Mr. Sedgwick's necessarily unperfected book has been analyzed and rearranged, and the original text has been increased by a third, the result of the editors' long and patient investigations. The whole of the first volume, treating of the general principles of the law of damages, is practically new matter, the most valuable part being the discussion of compensation for mental injury and for breaches of contract relating to telegraphs and to passenger carriage. Not content with generalizing the results of recent decisions, the editors have endeavored in well-considered opinions to point out the tendencies of the present rules, and to declare what they consider to be the logical consequences of the judicial position of to-day on the question of compensation.

Sedgwick's book has long been recognized in England, as well as in America, as a legal classic; but the fact that former editions have contained American citations only has tended to confine its practical value to the United States. The addition, however, by the present editors, of all the important English and Canadian decisions will have the effect of greatly extending its use, so that in the future it will be limited only by the field of the common law. To every lawyer who has this edition of the old standard on his shelves there will be the possibility of a complete knowledge of the theory of the measure of damages as it is understood at the present moment.

HISTORY OF THE LAW OF PRESCRIPTION IN ENGLAND. By Thomas Arnold Herbert, B.A., LL.B., being the Yorke Prize Essay of the University of Cambridge for 1890. London: C. J. Clay & Sons, 1891. 8vo. pp. xxi and 210.